BEFORE THE UNITED STATES INTERNATIONAL TRADE COMMISSION

STATEMENT OF DAVID B. WEINBERG
ON BEHALF OF THE
BATTERY COUNCIL INTERNATIONAL
REGARDING
CHINA: GOVERNMENTAL POLICIES AFFECTING U.S. TRADE IN SELECTED SECTORS

October 30, 2007

Good morning. My name is David Weinberg. I am legal counsel to the Battery Council International ("BCI"). BCI is a Chicago-based trade association that represents virtually all manufacturers of lead acid batteries in the United States, and most of the secondary smelters that recycle the lead in those batteries. Its members employ about 15,000 Americans in high-paying, skilled manufacturing jobs. BCI members operate manufacturing facilities in over two dozen states.

I am here this morning to report to you about the negative impacts on U.S. battery manufacturers and consumers that are arising from Chinese trade practices regarding lead, and to ask that the U.S. Government challenge these trade-distorting practices. As I will explain, two Chinese government actions in the last 18 months have played a major role in driving world lead prices to record highs --- more than three times their historic levels. Since the cost of lead is one of the largest contributors to the cost of producing a lead acid battery – the single largest, for most batteries -- this has led to a similar increase in product prices to Americans. It also has had a considerable negative impact on the ability of American companies to compete with Chinese companies in the ever-growing Chinese market.

The two practices with which BCI is concerned are, first, China's decision in 2006 to eliminate a 13 percent VAT rebate for exports of lead acid batteries and, second and particularly troublesome, China's decision in 2007 to levy a 10 percent export tax on refined lead metal. These are the latest examples of Chinese practices of the "restrictions on exports of certain raw materials," in violation of WTO principles, which the USTR told Congress last year are a growing concern.[1] (As explained below, in the case of lead, actions that discourage export of lead batteries are tantamount to restrictions on the export of lead metal.)

Background on BCI and Lead Acid Batteries

Before I describe these Chinese actions and their implications in greater detail, allow me to first provide some background on the U.S. lead acid battery industry and why Chinese actions that drive up the world price of lead are so important.

Approximately 117 million new lead acid batteries were shipped in North America in 2006. The vast majority of these (about 95 percent of the units) were either the familiar "starting, lighting and ignition" ("SLI") batteries used in vehicles and boats, or similar batteries that supply motive power to electric vehicles, forklifts and golf carts. The remaining production were batteries used to provide back-up emergency lighting, for back-up power, and for other industrial purposes.

Lead acid batteries store electricity for future use. A battery develops voltage from the chemical reaction produced when two unlike materials, such as its positive and negative plates, are immersed in an electrolyte. In a lead acid battery, these plates employ different chemical forms of lead, suspended in a sulfuric acid electrolyte.

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[1] United States Trade Reprentative, *2006 Report to Congress on China's WTO Compliance*, 36 (Dec. 11, 2006).

A typical SLI (auto) battery contains about 21.5 pounds of lead. Motorcycle and back-up lighting batteries contain less lead, while industrial batteries may contain hundreds of pounds of the metal. The cost of this lead is the single largest of a battery's primary cost components.

Lead is traded on world commodity markets, and priced on a world-wide basis. Historically, prices ranged from about $0.25 per pound to about $0.60 per pound. However, lead prices have soared recently – and, particularly, in the last year. As of today, it is near its all-time high of about $1.80 per pound (which was reached about two weeks ago). This means that the value of the lead in an SLI battery is about $38.00. While BCI battery manufacturer members use a variety of strategies to hedge against lead price variations, the costs of automotive batteries for American consumers have approximately tripled in the last three years as a result of this lead price increase.

In most batteries, lead recycled from old batteries can be used interchangeably with newly-mined and processed "virgin" lead, which keeps the cost of lead from both sources about the same. As a result, more than 40 percent of the world lead supply comes from recycling.[2] Moreover, since the vast majority of recycled lead comes from used lead acid batteries,[3] any action that artificially keeps lead in one geographical area (and thus outside of the world pool) has the effect of driving up world prices.

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[2] International Lead and Zinc Study Group, *Lead and Zinc Statistics – Monthly Bulletin*, (October 2007). Recycle rate was cacluated by dividing 2006 World Recovery of Secondary Lead by 2006 Word Lead Metal Consumption.

[3] *See, e.g.*, BCI National Recycling Rate Study, June 2005 (Showing U.S. battery lead recycling rate to be 99.2percent.

The Chinese Lead Decisions

In Cai Shui (2006) Document No. 139, effective September 15, 2006, the Chinese Ministries of Finance and Commerce, National Development & Reform Commission, General Administration of Customs, and State Administration of Taxation announced elimination of the previously-existing rebate of the 13 percent VAT on lead acid battery exports. (A number of other changes also were made at the same time.) The result was to discourage export of lead acid batteries made in China, and the change had a dramatic effect. As of May 2007, SLI battery exports were 40 percent lower than in the same period in 2006[4], and significant declines of exports of other battery types had occurred. This had the effect of removing from markets outside of China all of the lead contained in those unexported batteries.

In June 2007 China took another action that limited supplies of lead to the rest of the world. It imposed a 10 percent export duty on refined lead metal. Again, the impact was immediate, and even more dramatic: whereas China had exported 371,820 metric tons of lead metal between January and August 2006, it exported only 182,935 metric tons in the same period of 2007 – essentially, a 50 percent decline.[5]

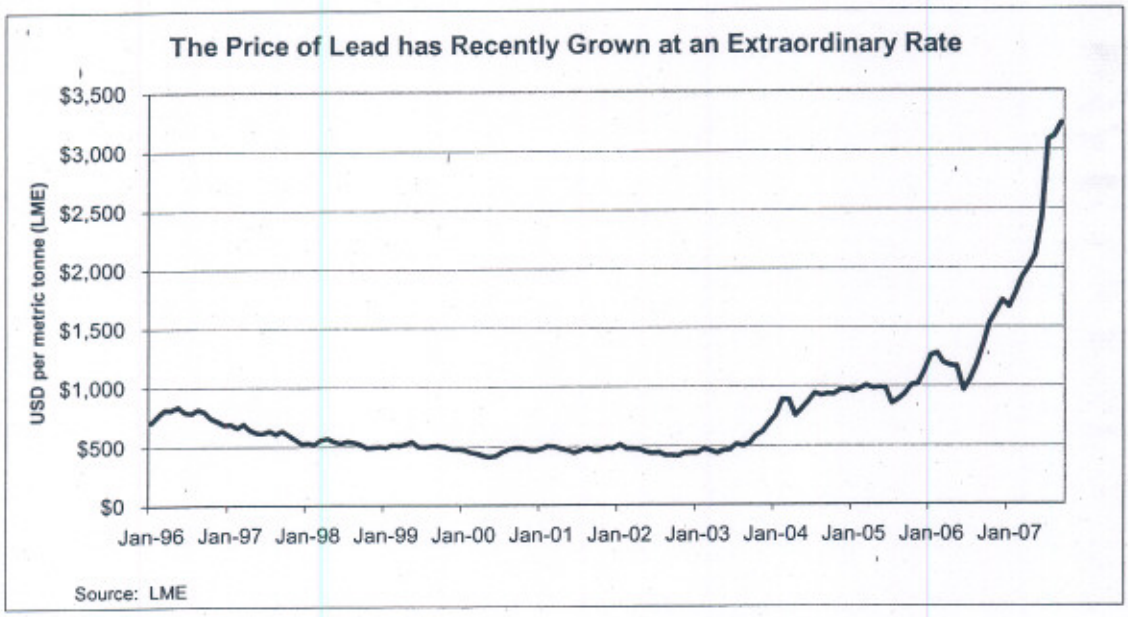
Impact of the Chinese Decisions on World Lead Prices

There has been a meteoric rise in lead prices over the past 12 to 14 months. As shown in the chart below, the spot price of lead has increased by an average *monthly* rate of more than seven percent for 2007. This rapid growth contrasts sharply with historical

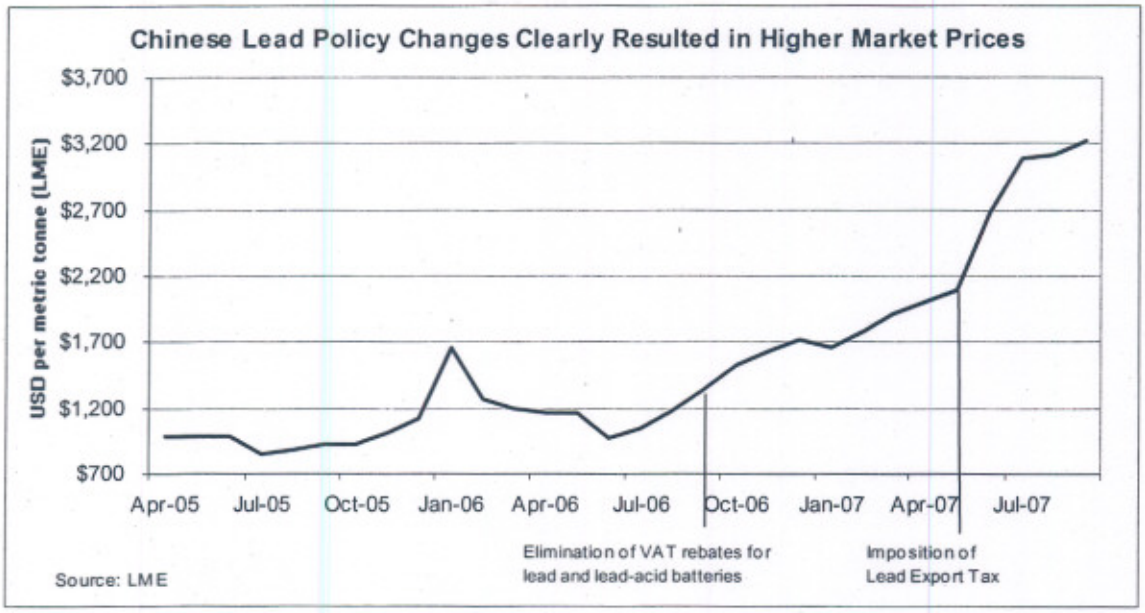
[4] CHR Metals, LTD, *World Lead/China Lead News and Data*, at 4, (July 23, 2007)

[5] Ryan's Notes, October 22, 2007.

pricing trends. Indeed, the preceding 10 years saw a comparatively flat – or even declining – price trend for lead.



This price increase is attributable, in part, to the same voracious hunger for resources that China's industrial base has demonstrated in countless other fields. But the Chinese government has exacerbated the increase with the policy changes described above. As is shown in the next chart, the global lead market reacted almost immediately to the 2006 elimination of the VAT subsidy on lead acid battery exports and, even more, to the 2007 imposition by the Chinese governmenof a tax on lead exports.



By restricting exports of lead and batteries, China has created a captive supply in its home market, while taking previously available lead away from world buyers. Not coincidentally, these restrictions parallel a sharp spike in U.S. exports of lead ore and concentrates. In other words, as Chinese lead has been withdrawn from the world market, world lead buyers are replacing it, to the extent possible, with lead from the United States and other sources. Essentially, the recent changes in Chinese policy have created a series of artificial distortions in the lead market. Higher global prices encourage U.S. lead suppliers to export, causing even tighter conditions for U.S. downstream industries. Artificially low prices in China, conversely, allow the Chinese industry to stockpile lead supplies, while gaining an unfair price advantage in the manufacture of products that require the use of lead.

These phenomena are unmistakable in the most recent data on imports and exports. "Through August, Chinese lead metal exports were…down 50.8 percent from

the same 2006 period." [6] In September, Chinese exports were down 73.9 percent.[7] Tellingly, China's major lead export destinations are regional, and all reported significant decreases in Chinese product. Exports to Singapore, Taiwan, and Japan all declined by more than 50 percent. At the same time, "Chinese imports of lead ores and concentrates rose 27.4 percent during the first eight months of 2007." [8]

While Chinese exports are falling, U.S. exports of lead ore and lead-acid batteries have increased significantly, particularly to Asia. For example, through August 2007, U.S. exports of lead ore and lead-acid batteries to Japan have increased, respectively, by 100 percent and 36 percent when compared to the same period last year.[9] Similarly, lead ore exports to South Korea – through August 2007 – have increased by 53 percent compared to the first eight months of 2006.[10] Singapore has imported U.S. lead ore for the first time since 2002.[11]

Additional insight as to the current tightness of the lead market can be gained from examining reported London Metals Exchange (LME) lead stocks. In September 2007, stocks closed at slightly more than 22 thousand metric tons – less than two days supply at current consumption rates.

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[6] Ryan's Notes; October 22, 2007

[7] Bloomberg, Oct 25, 2007, "China's Lead Exports Plunge in September, Worsening Shortage."

[8] Ryan's Notes supra

[9] Includes HTS subheadings 2607.00.0020, 8507.10 and 8507.20 from official export statistics of the U.S. Department of Commerce.

[10] Includes HTS subheading 2607.00.0020 from official export statistics of the U.S. Department of Commerce.

[11] *Id.*

WTO Implications of the Chinese Practices

The Chinese decisions on the battery VAT and lead duty have precedent in other industries trading in raw materials, and such duties, in particular, have been recognized as unfair trade barriers. In 2004, for example, the USTR recognized that Russian export tax on steel scrap "provides an artificial advantage to Russian steel producers by increasing domestic steel scrap supply, providing producers with an unfair advantage in Russia and in third markets. Moreover, it constricts global supplies of a key steel input, which has the effect of raising prices of steel scrap for otherwise competitive producers elsewhere, including those in the United States."[12] USTR amplified its views on Russian and Ukrainian export taxes in 2005:

> At a time when world demand and prices have been rising, the export tax has tended to increase Russian steel scrap supply, providing artificially low scrap costs to Russian steel producers while limiting global supply of a key steel input. Russian export tariffs on copper cathode have also created a market distortion, which is promoting vertical integration within the Russian copper industry. Russia currently maintains a 10 percent export tariff on copper cathode and a 0 percent export duty on copper wire rod. As a result, it is advantageous to export the higher value-added product (copper wire rod). Russian copper wire producers can obtain favorable prices on copper cathode, since cathode producers cannot export their product for its fair market value.[13]
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> This export duty has contributed to a decline in scrap exports from Ukraine, at a time when global demand and prices for steel scrap are rising. The export tax assists Ukrainian steel producers by increasing domestic steel

[12] United States Trade Representative, *2004 Nat'l Trade Estimate on Foreign Trade Barriers* – Russia at 416, (Apr. 1, 2004).

[13] United States Trade Representative, *2005 Nat'l Trade Estimate on Foreign Trade Barriers* – Russia at 520, (March 30, 2005).

> scrap supply, providing them with an advantage in Ukraine and their markets.[14]

Similar practices have been decried by USTR in connection with China's restrictions on exports of blast furnace coke, a key steel input;[15] China's quotas and high license fees on exports of fluorspar;[16] and high Russian export tariffs on steel scrap and copper products.[17]

BCI believes China's policies have led to a substantial increase in the price of lead elsewhere in the world. As a result, U.S. battery manufacturers are disadvantaged and the price of lead acid batteries to U.S. consumers (most notably car batteries) has skyrocketed.

Moreover, China's tax policies violate China's WTO commitments and likely constitute a countervailable subsidy under U.S. and WTO law. Elimination of the VAT rebate and imposition of an export tax is a subsidy under U.S. countervailing duty law because it constitutes a financial contribution, provides a benefit to the recipient, and is specific to a particular industry. China is providing essential raw materials goods at lower prices to the benefit of China's domestic manufacturers of lead acid batteries, while driving up the price of lead for manufacturers in other nations. The policies are especially beneficial to Chinese battery manufacturers, because around 80 percent of lead

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[14] United States Trade Representative, *2005 Nat'l Trade Estimate on Foreign Trade Barriers* – Ukraine at 633, (March 30, 2005).

[15] United States Trade Representative, *2005 Nat'l Trade Estimate on Foreign Trade Barriers* – China at 93, (March 30, 2005

[16] United States Trade Representative, *2007 Nat'l Trade Estimate on Foreign Trade Barriers* – China at 103-104, (Apr. 2, 2007).

[17] United States Trade Representative, *2006 Nat'l Trade Estimate on Foreign Trade Barriers* – Russia at 552, (March 31, 2006).

ore consumed in China is used to manufacture batteries.[18] And, as noted above, lead is one of the primary cost components in almost all types of batteries, with the cost of lead constituting a substantial percentage of manufacturers' overall costs. Thus, China's battery manufacturers are able to capitalize on the subsidy and reap the benefits of lower costs by charging artificially low prices to gain an unfair advantage over foreign manufacturers.

In short, China's recent policies affecting refined lead metal are the latest example of China's unfair trade practices and noncompliance with its WTO obligations. BCI urges the United States government to look closely upon China's tax policies and these distortive trade practices and to take appropriate action.

Thank you.

FOR MORE INFORMATION:

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[18] The International Lead Zinc Study Group, *ILZSG Insight: Long Term Regional Trends in Lead Usage*, No. 23, July 2007, at 5.